

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-981571-D3 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Inocencio Carrasquillo

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1600

Inocencio Carrasquillo

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 29 April 1966, an Examiner of the United States Coast Guard at New York, N.Y. suspended Appellant's seaman documents for 9 months outright plus 9 months on 24 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS PIONEER MYTH under authority of the document above described, on or about 4 February 1966, Appellant wrongfully assaulted and battered a fellow crewmember with a fishing gaff on board the vessel at San Fernando, Republic of the Philippines.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence certain documents and the testimony of several witnesses.

In defense, Appellant offered in evidence his own testimony, plus that of three other witnesses who testified as to prior acts of the alleged victim of the alleged assault.

At the end of the hearing, the Examiner reserved decision, on 31 March 1966.

On 29 April 1966, the Examiner entered an order suspending all documents issued to Appellant for a period of nine months outright plus nine months on twenty-four months' probation.

The decision and order were served on counsel on 2 May 1966. Appeal was timely filed on 16 May 1966, and perfected on 20 July 1966.

FINDINGS OF FACT

On 4 February 1966, Appellant was serving as a messman on board the United States SS PIONEER MYTH and acting under authority of his document while the ship was in the port of San

Fernando,
Republic of the Philippines.

Shortly before PIONEER MYTH arrived at San Fernando, Appellant and one Emilio M. Malapit, a saloon messman aboard the vessel, had been involved in a dispute over wagers connected with a dice game. Malapit threatened to "get" Appellant ashore. On the date in question Malapit, who had engaged in violent acts aboard the vessel before, "got" Appellant ashore by hitting him with a beer bottle.

When both were returned to the ship by local police, Malapit boarded the vessel first and advised the mate on watch that there had been trouble. When the mate on watch went to call the chief mate, Appellant boarded the vessel and started to his quarters. He became aware of the fact that Malapit, whose room was adjacent to his, was following him down the passageway when he heard Malapit say "I told you I'd get you ashore," or words to that effect. He saw Malapit putting an object in his pocket.

Appellant thereupon ran to his door which was open, seized a fish gaff, and pursued the fleeing Malapit, ultimately inflicting upon Malapit several "stab" or "cut" wounds.

The first time that Appellant and Malapit were seen by a third party on this occasion was when the mate of the watch returned to his place on the open deck and found the two men fighting outside the deck house. Neither was then armed. No weapon was ever found in the possession of or traceable to either Malapit or Appellant.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

The appeal here is based on a contention that Appellant acted in legitimate self-defense. It is contended that Appellant had a right, under the conditions of his alleged victim's threat, an earlier assault and battery upon Appellant, and the alleged victim's still earlier record of violence, to believe that the alleged victim was threatening Appellant in such fashion as to justify action which would otherwise be assault and battery.

APPEARANCE: Abraham E. Freedman, of New York, N. Y., by Edward M. Katz, Esq.

OPINION

I.

Appellant does not deny that he cut Malapit with his fish gaff. What he does contend is that he acted in justifiable self-defense.

Four circumstances are urged as justifying a reasonable apprehension on Appellant's part that he was threatened with immediate bodily harm:

- (1) an uttered threat by Malapit on the scene;
- (2) a "furtive gesture" by Malapit such that Appellant saw the "handle of a knife which was concealed in Mr. Malapit's trousers pocket." (Quotations from Appellant's brief.);
- (3) and assault and battery upon Appellant by Malapit earlier that night; and
- (4) Malapit's reputation for violence.

The two latter circumstances are such that if they are true they become relevant only if the "on scene" situation is such that earlier events may reasonably be referred to interpret the situation. It is to the "knife" and "uttered threat" elements that we must turn first before any consideration need be given to the earlier actions.

II.

Discussion of the "knife" question is complicated by the Examiner's handling of the matter in his "Findings" and "Opinion."

The Examiner's ninth "findings of fact" reads:

"When Carrasquillo was about ten feet from his room he saw Malapit about ten feet or so behind him with an object in his hand which the person charged says was a knife. Malapit, coming toward him, said, 'I told you I'd get you,' or words to that effect. Carrasquillo says he was in fear of Malapit . . ." (D-8).

Two thirds of this "finding" are mere recitation of testimony with no indication whether the Examiner has adopted it as true or not. The only "finding" is that Appellant saw an "object."

Later, in his "Opinion," the Examiner, again repeating Appellant's testimony, speaks of an "unopened knife." (D-10). Appellant makes much of the fact that there is no evidence in the record to indicate that the "knife" was unopened. I must agree. I must also acknowledge that there is no evidence in the record to indicate what the character of the "knife" was, and whether it was of a type that could be "opened."

I prefer to limit my findings to what the Examiner actually found, that Malapit has an "object." For upon Appellant's own testimony the character of the object is immaterial. He said:

"And when I look in the back, that's when I see the knife, and he do like this (indicating) try

to put it in the pocket." (R-55)

Trying to put an object, even a knife, into one's pocket cannot be construed by another as an immediate threat.

III.

Looking to the verbal "threat", we see that Malapit said, "I told you I'd get you ashore." Accepting that Malapit had made that threat at the time of the dice game, and that he had accomplished his aim, this is no more than a vindictive reminder. Very definitely, whatever the precise words were, the condition of "ashore," admitted by Appellant, precludes any reasonable belief that this constituted a present threat.

IV.

This view of the record indicates that Appellant failed to sustain the burden he assumed, that of establishing, in rebuttal of acts of assault and battery, that he was justified. But even further, there is the fact that the evidence clearly establishes that Appellant pursued Malapit for some hundred feet. Appellant's brief admits that Malapit possibly was in retreat when first struck by Appellant. It is said, "The former [Appellant] grabbed his fishing gaff and struck the latter [Malapit] who perhaps had turned to run." This acknowledgment alone defeats an argument of legitimate self-defense.

CONCLUSION

The record supports a finding that Appellant repeatedly assaulted and battered Malapit with a fish gaff under circumstances which do not admit of a claim of legitimate self-defense.

ORDER

The order of the Examiner dated at New York, N. Y. on 29 April 1966, is AFFIRMED.

W. J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 31st day of January 1966.

INDEX

Assault (including battery)

dangerous weapon
propensities, dangerous, when relevant

Examiners

prior record, ascertainment of

Self defense

not proved

Prior record

method of ascertaining